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EXAMINER

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ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Response to Amendment

Applicant's remarks filed 5/01/06 have been considered but are moot in view of the new ground(s) of rejection. Claims 1-10 are pending and claims 4, 6-8, and 10 are withdrawn as drawn to a non-elected species.

Election/Restrictions

Newly submitted claim 10 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The specification teaches, that the belt-like portion can be welded to the outer surface of the lens assembly. The belt is never taught to be fixed in the lens.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 10 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krupicka (U.S. 4,251,076) in view of Sugarman (U.S. 4,965,913). Krupicka discloses a pair of swimming goggles comprising a pair of lenses 16 and 18 that are connected together by a nose engaging bridge 12. The lens assemblies have a transverse direction horizontally extending across said head and longitudinal direction vertically extending orthogonally to the transverse direction. Each lens has an intermediate section 22 that extends across the lens at a substantially middle level. The intermediate section is in the form of a bar 22, which forms a belt across the lenses. Krupicka does not explicitly state how the see-through clarity is specified, but the drawings indicate that the bar is a solid piece of material and therefore it would be inherent that the bar is at least opaque because it is used and seen as a single cross (Figures 1 and 3), consequently giving the intermediate section a total luminous transmittance of substantially 0%. An upper and lower section of the lenses are located above and below the intermediate section respectively. The upper and lower sections have a much higher see through clarity than the intermediate section. The

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intermediate section has a width of .25 inches (Column 2, 54-57), which is equivalent to 6.35mm. However, Krupicka is missing a strap that attaches to the goggles and keeps them around the head of the wearer. Sugarman shows a strap for goggles comprising a strap member 16 having loops 24 that are placed around the temple bars 12 and 14. The loops allow adjustment of the strap (Column 2, 48-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Sugarman to modify Krupicka in order to provide a simple way to retain eyewear on the head of the wearer.

Allowable Subject Matter

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments, see remarks, filed 5/01/06, with respect to claim 9 have been fully considered and are persuasive. The rejection of claim 9 has been withdrawn.

Applicant's arguments filed 5/01/06 in regard to claims 1-3 and 5 have been fully considered but they are not persuasive.

Applicant argues that the Examiner has not considered the phrase "swimming goggles" in the preamble. The specification has not set forth a definition different than the ordinary and accepted meaning. The definition of goggles is "protective glasses set in a frame". The device of Krupicka shows a pair of swimming goggles comprising a pair of lenses 16 and 18 that are connected together by a nose engaging bridge 12. The lens assemblies have a transverse direction horizontally extending across said head and longitudinal direction vertically extending orthogonally to the transverse direction. Each lens has an intermediate section 22 that extends across the lens at a substantially middle level. The intermediate section is in the form of a bar 22, which forms a belt across the lenses. Krupicka does not explicitly state how the see-through clarity is specified, but the drawings indicate that the bar is a solid piece of material and therefore it would be inherent that the bar is at least opaque because it is used and seen as a single cross (Figures 1 and 3), consequently giving the intermediate section a total luminous transmittance of substantially 0%. An upper and lower section of the lenses are located above and below the intermediate section respectively. The upper and lower sections have a much higher see through clarity than the intermediate section. The intermediate section has a width of .25 inches (Column 2, 54-57), which is equivalent to 6.35mm. The goggles of Krupicka are capable of being worn while swimming. The structure of Krupicka meets the claim language/term "swimming goggles" that is provided by the applicant.

Applicant submits that the teachings of Sugarman do not make up for the deficiencies in Krupicka. The claim language requires that the goggles comprise a strap

that goes around the head of the wearer. Sugarman discloses a strap for goggles comprising a strap member 16 having loops 24 that are placed around the temple bars 12 and 14. The loops allow adjustment of the strap (Column 2, 48-53). The structure of Sugarman meets the claim limitations as provided by applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins
Patent Examiner
Art Unit 3765
July 24, 2006

AJT


KATHERINE MORAN
PRIMARY EXAMINER